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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-107

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,

v.

ERIE LACKAWANNA RAILROAD COMPANY and THEODORE BENAZET, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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INDEX

	Page
Table of Authorities	1
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	2
Statement	2
Argument	4
1. Congress has refused to change the Halcyon rule	4
2. The result is not unjust	8
3. There is no conflict between circuits	10
4. State law does not and should not control	11
Conclusion	13

Table of Authorities

CASES:

Crain Bros., Inc. v. Wieman & Ward Co., 223 F.2d 256 (1955)	10
Crane v. Cedar Rapids and Iowa City Ry., 395 U.S. 164 (1969)	9
D/S Ove Skou v. Hebert, 365 F.2d 341 (5th Cir. 1966)	10
Farren v. New Jersey Turnpike Authority, 31 N.J. Super. 356, 106 A.2d 752 (App. Div. 1954)	11
Federal Marine Terminals, Inc. v. Burnside Shipping Co., 394 U.S. 404 (1969)	6
Halcyon Lines v. Haenn Ship Ceiling and Refitting Corp., 342 U.S. 282 (1952)	passim
Horton & Horton, Inc. v. T/S J. E. Dyer, 428 F.2d 1131 (5th Cir. 1970), *cert. denied sub nom.* Horton & Horton, Inc. v. Vaughn Marine, Inc., 400 U.S. 993 (1971)	10
Italia Societa v. Oregon Stevedoring Co., 376 U.S. 315 (1964)	4

Page

Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959) 6
Madruga v. Superior Court, 346 U.S. 556 (1954) 6
Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970) 9
Pope & Talbot, Inc. v. Hawn, 346 U.S. 406 (1953) .. 4, 6
Ryan Stevedoring Co. v. Pan-Atlantic Steamship Co., 350 U.S. 124 (1956) 6
The North Star, 106 U.S. 17 (1882) 11
Watz v. Zapata Off-Shore Co., 431 F.2d 100 (5th Cir. 1970) 10
Wellenheider v. Roder, 49 N.J. 1, 227 A.2d 329 (1967) 11
Weyerhaeuser Steamship Co. v. United States, 327 U.S. 597 (1963) 6
Wilburn Boat Co. v. Firemen's Fund Ins. Co., 348 U.S. 310 (1955) 6

STATUTES:

Longshoreman's and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.* 8
New Jersey Tortfeasors Contribution Law, N.J. Rev. Stat. 2A: 53 A-3 2
New York Civil Practice Law and Rules, § 1401 12

MISCELLANEOUS:

S. 555, 88th Cong., 1st Sess. (1963) 7
S. 2313, 87th Cong., 1st Sess. (1961) 6,7
H.R. 1070, 88th Cong., 1st Sess. (1963) 7
H.R. 7911, 87th Cong., 1st Sess. (1961) 7
Hearings of the Subcommittee on Merchant Marine and Fisheries of the Senate Commerce Committee, 87th Cong., 2nd Sess. Serial #53 (March 1 and 2, 1962) 7
Hearings of the Subcommittee on Merchant Marine and Fisheries of the Senate Commerce Committee, 88th Cong., 1st Sess. Serial #22 (May 20 and 22, 1963) 7
S. Rep. No. 1603, 87th Cong., 2nd Sess. (1962) 7
Brief for Respondent, Halcyon Lines & Vinke & Co. v. Haenn Ship Ceiling and Refitting Corp., Oct. Term 1951 No. 62 13
Prosser, Law of Torts, 275 *et seq.* (3 ed. 1964) 12

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OPINIONS BELOW

The opinion and order of the United States District Court for the Southern District of New York (App. A of Petition) are reported at 315 F.Supp. 357. The opinion of the United States Court of Appeals for the Second Circuit (App. B of Petition) is not yet reported.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether, under the factual circumstances of this case, *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282 (1952), and subsequent cases should be overruled and this Court should create a right of contribution in non-collision, maritime, injury cases, despite the refusal of Congress to change the *Halcyon* rule.

STATUTE INVOLVED

The pertinent provisions of the New Jersey Tortfeasors Contribution Law are set forth in the Petition at pp. 2-3.

STATEMENT

Theodore Benazet, an employee of Respondent Erie Lackawanna Railroad, was injured on July 30, 1964, when he fell while working on a boxcar owned by Petitioner Atlantic Coast Line Railroad Company. At the time of the accident, Benazet, a yard brakeman, was attempting to tighten a handbrake on the boxcar, which was standing on Erie's carfloat moored in the Hudson River just off the coast of New Jersey.

Benazet brought suit against Atlantic based on diversity of citizenship, and Atlantic impleaded Erie on the ground that Erie was negligent for failure to inspect properly and that Atlantic was entitled to contribution. (Atlantic also claimed originally a right to indemnity but dropped this claim at the end of the

trial.) The trial court applied national maritime law, Atlantic did not contest this point on appeal, and Erie assumes that such law controls.

As District Judge Cooper noted in his opinion, the facts evidently found by the jury were that when Benazet applied the handbrake, a rotted foot board gave way, and he put his weight against the handbrake assembly which in turn broke away from the car as a result of some defective brackets. The defective condition of the brackets required "years to develop," and a repair job had been attempted in "a highly improper procedure" (Petition, p. A-3). There was no evidence that this repair job had been performed by Erie. The boxcar had left Atlantic's possession less than two months prior to the accident, had then been in the possession of at least seven different railroads, and had been in Erie's possession for only three days (*ibid.*). The jury found that both Atlantic and Erie were negligent, and that Erie's negligence was "a substantial factor" in bringing about Benazet's injuries (the same question was not posed as to Atlantic). However, as Judge Cooper specifically found, "* * * Atlantic was either the cause or knew or should have known of the existence of the defects in the brackets of the car it placed in commerce and * * * there was no superseding cause of the accident" (*ibid.*).

The District Court upheld the jury's award of $200,000 as against Atlantic and dismissed Atlantic's claim for contribution against Erie. The Court of Appeals unanimously affirmed.

ARGUMENT

I. Congress Has Refused To Change the Halcyon Rule.

Almost twenty years ago this Court was asked to hold that there was an established right to contribution between joint tortfeasors in non-collision, maritime, injury cases. It refused to do so and held instead that no such right exists.[1] The Court said that whether such a right *should* exist must "await congressional action," since Congress had theretofor "stopped short of approving the rule of contribution here urged * * *." *Halcyon Lines* v. *Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282, 285, 287 (1952).

Significantly, the Court pointed out:

> Many groups of persons with varying interests are vitally concerned with the proper functioning and administration of all these Acts as an integrated

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[1] Petitioner portrays *Halcyon* as deferring (Petition, p. 5) or putting aside (*id.* at 7) the issue of contribution in non-collision cases. The Court of Appeals correctly pointed out that *Halcyon* "expressly held" no such right of contribution to exist (*id.* at B-5). An admiralty rule of law can be stated positively or negatively, of course, and it is nonetheless a rule of law. *Just* v. *Chambers*, 312 U.S. 383, 391 (1941). Moreover, this Court itself has refuted Petitioner's characterizations. In *Italia Societa* v. *Oregon Stevedoring Co.*, 376 U.S. 315, 320 (1964), the Court said that *Halcyon* "held that maritime principles of contribution between joint tortfeasors prevailing in collision cases were not applicable in suits for contribution by a shipowner against stevedoring companies." Even the three dissenters in *Italia Societa* took the view that *Halcyon*, along with *Pope & Talbot, Inc.* v. *Hawn*, 346 U.S. 406 (1953), held that "the system of compensation which Congress established in the Longshoreman's and Harbor Workers' Compensation Act as the sole liability of a stevedoring company to its employees prevented a shipowner from shifting all or part of his liability to the injured longshoreman onto the stevedoring company, the longshoreman's employer." 376 U.S. at 325 (footnote deleted).

> whole. We think that legislative consideration and action can best bring about a fair accommodation of the diverse but related interests of these groups. The legislative process is peculiarly adapted to determine which of the many possible solutions to this problem would be most beneficial in the long run. *A legislative inquiry might show that neither carriers, shippers, employees, nor casualty insurance companies desire such a change to be made.* The record before us is silent as to the wishes of employees, carriers, and shippers; it only shows that the Halcyon Line is in favor of such a change in order to relieve itself of a part of its burden in this particular lawsuit. [*Id.* at 286-287; emphasis added; footnote deleted.]

The Court went on to say:

> Should a legislative inquiry convince Congress that a right to contribution among joint tortfeasors is desirable, there would still be much doubt as to whether application of the rule or the amount of contribution should be limited by the Harbor Workers' Act, or should be based on an equal division of damages, or should be relatively apportioned in accordance with the degree of fault of the parties. [*Ibid.*; footnote deleted.]

Both in these and other portions of its opinion, the Court thus made two important points. First, Congress might or might not want to change the rule that no right of contribution exists, depending upon what advocates and opponents of such a rule were able to show. Secondly, the solution was peculiarly one for Congress in view of the fact that application of the rule might be limited by other maritime acts, and even if the rule were changed and applied, further decisions would have to be made, such as how contribution was to be apportioned and in what ways the new rule would be "integrated with other acts" in the maritime field.

Despite this clear invitation by the Court in *Halcyon* and subsequent cases[2] to those who advocate a change in the rule to step forward and present their case, they have failed to do so. Those organizations, labor groups, government agencies and federal departments most knowledgable in the field and most likely to be concerned about the injustices, anomalies and inconsistencies which Petitioner alleges to exist have in fact shown no concern at all about *Halcyon*. The annual reports of the Maritime Administration, for example, reveal that at no time since 1952 has the Administration discovered any of the dire consequences alleged by Petitioner. The Interior, Treasury, Justice and Commerce Departments, the International Longshoremen's Association, and the myriad other groups which regularly present their views to Congress on issues of importance in the maritime field have not urged that *Halcyon* be overruled, as surely they would have if the picture were as Petitioner paints it.

Bills *have* been introduced in Congress which would have had the effect of changing the *Halcyon* rule and allowing contribution in cases such as this one.[3] See,

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[2] The *Halcyon* case has repeatedly been approved, reaffirmed, or cited with apparent approval by this Court since it was originally decided. *E.g., Pope & Talbot, Inc.* v. *Hawn, supra,* 346 U.S. at 408; *Madruga* v. *Superior Court,* 346 U.S. 556, 563 (1954); *Wilburn's Boat Co.* v. *Firemen's Fund Ins. Co.,* 348 U.S. 310, 320 (1955); *Ryan Stevedoring Co.* v. *Pan-Atlantic Steamship Co.,* 350 U.S. 124, 133 (1956); *Kermarec* v. *Compagnie Generale Transatlantique,* 358 U.S. 625, 630 n. 5 (1959); *Weyerhaeuser Steamship Co.* v. *United States,* 372 U.S. 597, 603 (1963); *Italia Societa* v. *Oregon Stevedoring Co., supra,* 376 U.S. at 320; *Federal Marine Terminals, Inc.* v. *Burnside Shipping Co.,* 394 U.S. 404, 417 (1969).

[3] S. 2313, a bill "to unify apportionment of liability in cases of collision between vessels, and related casualties," was introduced in the 1st Session of the 87th Congress by Senator Magnuson on July 26, 1961, and was referred to the Commerce Committee's

by way of example, Sections 4(a), 4(b) and 9 of S. 555, printed as Appendix A to this Brief. Significantly,

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Subcommittee on Merchant Marine and Fisheries. Hearings were held by the Subcommittee on March 1 and 2, 1962. 87th Cong., 2nd Sess. Serial #53. On March 23, 1962, the bill was considered in executive session by the full Committee and ordered reported favorably with amendments not relevant here. The bill was reported by Senator Bartlett on June 15, 1962, with the title, "Unifying Apportionment of Liability in Collisions and Other Maritime Casualties." S. Rep. No. 1603, 87th Cong., 2nd Sess. (1962). On September 28, 1962, consideration of the bill was indefinitely postponed.

H.R. 7911, the companion bill to S. 2313 which shared its title, was introduced in the 1st Session of the 87th Congress by Congressman Garmatz on June 28, 1961, and was referred first to the Committee on Merchant Marine and Fisheries and then to the Subcommittee on Merchant Marine. Comments were sought and received from the General Accounting Office and the Departments of the Treasury, Commerce, Justice and State. The Subcommittee took no further action on the bill.

S. 555 (see Appendix A hereto) was similar in all significant aspects to S. 2313 of the 87th Congress, as amended by the Commerce Committee. S. 555 was introduced in the 1st Session of the 88th Congress by Senator Bartlett on January 28, 1963, and referred to the Subcommittee on Merchant Marine and Fisheries of the Commerce Committee. Hearings were held on May 20 and 22, 1963 (88th Cong., 1st Sess. Serial #22), and on December 9, 1963, the bill was considered in executive session by the Subcommittee and reported favorably to the full Committee with an amendment in the nature of a substitute. *The amendment changed the bill so as to make it applicable solely to collision cases.* The bill, as reported, was considered by the full Committee in executive session on December 10, 1963, but no further action was taken.

H.R. 1070 was identical in language to H.R. 7911 of the 87th Congress and similar to S. 555 of the 88th Congress. H.R. 1070 was introduced in the 1st Session of the 88th Congress by Congressman Garmatz on January 9, 1963, and referred to the Committee on Merchant Marine and Fisheries. Comments were sought and received from the General Accounting Office and the Departments of the Treasury, Commerce, Justice and State. The bill was not even referred to a Subcommittee, and no further action was taken.

however, the only committee report available[4] indicates that Congress was *not* concerned about the *Halcyon* rule, despite the plain language of these bills. Even more to the point, *the bills were never even reported out of committee, much less approved by Congress.*

Thus, whether we treat the history of these bills as evidence that Congress is disinterested in changing the present rule or as an outright rejection by Congress of any change, the message is clear: on a question which this Court said "the legislative process is peculiarly adapted to determine", Congress has answered, and the answer is that the present state of law should remain in effect.[5]

2. The Result Is Not Unjust.

Petitioner would have the Court believe that it must ignore this congressional history in order to do justice. The fact is that there are any number of reasons why Congress may not want to establish a right of contribution in non-collision cases. For example, although Petitioner fails to mention it, Respondent is a covering employer under the Longshoreman's and Harbor Workers' Compensation Act, 33 U.S.C. § 901, *et seq.*, and has paid substantial benefits to Benazet pursuant to that Act for these same injuries. It must make these payments *regardless of fault.* Congress may well have felt that this relationship and the reciprocal obligations between employer and employee under the Act

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[4] See n. 3, *supra.*

[5] It is important to emphasize, as mentioned in n. 3, *supra*, that while these bills originally would have applied to both collision and non-collision cases, they were specifically changed in committee to apply only in collision cases. Thus, there has been congressional recognition of the very distinction between collision and non-collision cases that Petitioner wants this Court to abolish in the area of maritime contribution.

should not be upset by additional employer responsibilities to third parties.

Moreover, as the District Court specifically found, the defect on the boxcar that caused Benazet's injuries was "a condition requiring years to develop"; the car had left Petitioner's possession "less than two months prior to the accident", and thus Petitioner "was either the cause or knew or should have known of the existence of the defects in the brackets of the car it placed in commerce and * * * there was no superseding cause of the accident" (Petition p. A-3). Congress may well have concluded that by denying contribution and thus placing full responsibility on the owner of the defective property, it could better ensure the safety of those working on that property. Thus, this case is not even one of "injustice" as between the parties.[6]

The result here is that the injured Benazet will receive full recovery. This case, therefore, is a far cry from *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970), where no right of action for wrongful death existed, where the family of the deceased employee was totally without remedy or redress, where the opinion which originally denied the right of action had itself rested on a faulty interpretation of prior law, and where great confusion in the law had resulted.[7]

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[6] In the transportation field, the Court has refused even to correct instances of injustice when it felt that the task was primarily one for Congress rather than for the courts. *E.g.*, *Crane* v. *Cedar Rapids and Iowa City Ry.*, 395 U.S. 164, 167 (1969).

[7] In *Moragne* the Court was also attempting to achieve uniformity in the wrongful death field regardless of where on navigable waters the seaman's death occurred—that is, whether within or outside the three-mile limit—and regardless of whether the seaman was a "Sierscki" or "Jones Act" type. Here, federal maritime law is uniform in non-collision personal injury cases: there is no right of contribution.

3. There Is No Conflict Between Circuits.

Petitioner cites four cases which it says are in conflict with the ruling below and which therefore call for review of that ruling by this Court. The conflict is illusory.

(a) In *Horton & Horton, Inc.* v. *T/S J. E. Dyer*, 428 F.2d 1131 (5th Cir. 1970), *cert. denied sub nom. Horton & Horton, Inc.* v. *Vaughn Marine, Inc.*, 400 U.S. 993 (1971), the court specifically held *Halcyon* inapplicable. 428 F.2d at 1134. Not only did the case involve a *collision*, but the division of damages was between two vessel owners and brought into play a written assignment of rights and subrogation. In addition, the decision rested on the peculiar relationship of a barge to its tug and a finding that the barge breached a warranty of seaworthiness.

(b) *Watz* v. *Zapata Off-Shore Co.*, 431 F.2d 100 (1970), was decided by the same court and merely relied on *Horton & Horton* in a situation where the vessel was out of navigation and neither of the parties was a vessel (in navigation) owner or the injured party's employer. There was no discussion of the contribution rights, indemnity or liability of the owner of the vessel.

(c) In *D/S Ove Skou* v. *Hebert*, 365 F.2d 341 (1966), decided again by the same circuit, the shipowner was held entitled to 100% indemnity against each of the stevedores, to be borne equally *by them*. There was no discussion of contribution.

(d) The Third Circuit did not even mention *Halcyon* in *Crain Bros., Inc.* v. *Wieman & Ward Co.*, 223 F.2d 256 (1955), and none of the parties cited the case or argued the contribution question in their briefs. The court found that a barge owner breached its warranties

of seaworthiness to a charterer which, in turn, was found to be negligent in the operation of the barges. It is noteworthy that the court cited a *collision* case (*The North Star*, 106 U.S. 17 (1882)) in support of its division of damages and that it modified the lower court judgment to provide that if the cargo owner could not collect one half of the judgment from either party, that amount could then be assessed against the other. Thus, the court was not announcing a rule of contribution as in *Halcyon*, where a vessel owner was denied contribution from the employer of the plaintiff.

Surely, if there were a conflict between circuits, one of the courts in these cases, or in the instant one, would have recognized and mentioned it. None of them has, because no such conflict exists.

4. State Law Does Not and Should Not Control.

As an alternative basis for recovery, Petitioner would have the Court hold that state law controls on the issue of contribution.

In the first place, this is hardly the case to declare any such rule,[8] for as the District Court and the Court of Appeals both pointed out, it is not at all clear that New Jersey law would grant contribution under the circumstances of this case.[9]

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[8] It would also be anomalous to declare a major new rule of maritime law in a case involving two railroads, a defective boxcar and a moored carfloat.

[9] The District Court and Court of Appeals both cited and relied on a 1954 decision of the New Jersey Appellate Division, *Farren* v. *New Jersey Turnpike Authority*, 31 N.J. Super. 356, 106 A.2d 752 (App. Div. 1954). It should be noted that that case has been specifically cited with approval by the New Jersey Supreme Court. *Wellenheider* v. *Roder*, 49 N.J. 1, 5, 227 A.2d 329, 333 (1967). For a clear discussion of the reasons why New Jersey law probably would not allow contribution, see Judge Cooper's opinion below, Petition p. A-13 n. 4.

Secondly, even if New Jersey law established a right of contribution, the court would then have to pass on Respondent's contention that it would have a right of indemnity which in turn would "wash out" the contribution.

Thirdly, nothing could be more destructive of federal uniformity in the maritime field than the result sought by Petitioner. In the present case, for example, if the accident had happened on the New York side of the bi-state harbor, New York law would have denied Petitioner any right to contribution because of the absence of a joint judgment. New York Civil Practice Law and Rules, § 1401. An accident happening on different sides of the same navigable waters would thus lead to disparate conclusions on the right of a party to contribution and to great confusion in an area of the law which uniquely calls for harmony and uniformity. Not only do state laws vary widely (see Prosser, *Law of Torts*, 275 *et. seq.* (3d ed. 1964)), but many actions would enmesh the federal courts in disputes as to the location of accidents-in-transit for purposes of determining which state law controlled, and all of the current problems with the application of conflicts of law would be introduced into a large number of suits.

Finally, the most direct answer to Petitioner's request for application of state law is the one given by the Court of Appeals: *Halcyon* did not create a void to be filled by another law, state or otherwise; "it squarely held there is *no right of contribution* among tort feasors in a non-collision case." Petition p. B-6 (emphasis by the court).

CONCLUSION

What the Respondent in *Halcyon* told the Court nineteen years ago—and with which the Court apparently agreed—is even truer now than it was then:

> We suggest that judicial legislation * * * can lead only to chaos. If the scheme of things is to be changed, Congress should legislate. Piece by piece judicial legislation cannot solve the problem satisfactorily.[10]

We respectfully urge the Court to deny certiorari and leave this issue where the Court originally and correctly placed it: with the Congress.

Respectfully submitted,

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[10] Brief for Respondent, *Halcyon Lines & Vinke & Co.* v. *Haenn Ship Ceiling and Refitting Corp.*, Oct. Term 1951 No. 62, p. 17.

APPENDIX

APPENDIX

APPENDIX A

88TH CONGRESS
1ST SESSION

S. 555

IN THE SENATE OF THE UNITED STATES

January 28 (legislative day, January 15), 1963

MR. BARTLETT introduced the following bill; which was read twice and referred to the Committee on Commerce

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A BILL

To unify apportionment of liability in cases of collision between vessels, and in other maritime casualties.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, where a collision or other maritime casualty occurs, the compensation due for damages arising therefrom shall be settled in accordance with the following provisions:

SEC. 2. If the casualty occurs without fault, if it is caused by force majeure, or if the causes of the casualty cannot be determined, the damages shall be borne by those who have suffered them.

SEC. 3. If the casualty is caused by the fault of only one vessel, liability to make good the damages shall attach to the one which has committed the fault.

SEC. 4. (a) If the casualty is caused by the fault of two or more vessels, the liability to make good the damages shall be in the same proportion as the degree of fault: *Provided,* That if it is not possible to establish the degree of respective fault, or if it appears that the faults are equal, the liability shall be apportioned equally.

(b) In respect of damages caused by death or personal injury, liability shall be joint as well as several. When a vessel pays a larger part than that which in accordance with the provisions of subsection (a) hereof she ought ultimately to bear, she shall have the right of contribution for the excess.

(c) The damages to vessels, or to their cargoes, or to the effects or other property of the crews, passengers, or other persons on board shall be borne by the vessels in fault in accordance with the provisions of subsection (a) hereof without joint and several liability toward third parties and without right of contribution.

SEC. 5. The liability imposed by the preceding sections shall attach, in cases where the casualty is caused by the fault of a pilot, even when the carrying of a pilot is compulsory.

SEC. 6. The right of action for the recovery of damages resulting from a casualty shall not be conditional upon the entering of a protest or the fulfillment of any other special formality.

SEC. 7. The provisions of this Act shall not affect the liability under a contract of carriage or any contract; nor shall such provisions be construed as imposing any liability from which there is exemption by any contract or by any provision of law, or as affecting the right to limit liability in the manner provided by law.

SEC. 8. (a) Actions for the recovery of damages shall be barred after an interval of two years from the date of the casualty.

(b) Actions to enforce the right of contribution allowed by subsection (b) of section 4 shall be barred after an interval of one year from the date of payment.

(c) The court in which such actions are brought may extend such interval if it shall be satisfied that during such

period there had not been any reasonable opportunity of arresting the vessel involved within the jurisdiction of the court or within the territorial waters of the country in which the libelant resides or has his principal place of business.

SEC. 9. This Act shall apply to the liability to make good the damages caused or contributed to by any fault of a vessel even if no collision has actually taken place.

SEC. 10. This Act shall apply to the liability to make good the damages in all cases to which the admiralty and maritime jurisdiction of the United States extends. The liability to make good the damages shall be in the same proportion as the degree of fault respectively committed and shall apply in the same manner between any vessel or vessels and the owners or operators of any land structure, facility, or other property, or between other persons, as the rule is applied between vessels.

SEC. 11. This Act shall apply to actions in personam as well as to actions in rem.

SEC. 12. The last sentence of section 1 of the Act of September 4, 1890 (26 Stat. 425 (33 U.S.C. 367)) is hereby repealed.

SEC. 13. This Act may be cited as the "Collision Liability Apportionment Act, 1963". It shall apply only to causes of action arising after the date of its approval.